IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

No. 93

GULF OIL CORPORATION,

Petitioner,

against

CORNELIUS GILBERT, doing business under the firm name and style of GILBERT STORAGE & TRANSFER COMPANY,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENT'S BRIEF

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Respondent.

RESPONDENT'S BRIEF

Facts

Respondent is the owner of a large warehouse located at Lynchburg, Virginia (ff. 9-10). He had on his premises a gasoline pump, fuel for which was purchased from time to time from the petitioner (f. 11). On March 8, 1944, while a delivery of gasoline was being made by the petitioner, its servants, agents or employees, gasoline was caused to escape from the truck which was making the delivery and was caused to explode and set on fire respondent's warehouse (ff. 12; 13). As a result of this fire and explosion, the respondent's warehouse and contents contained therein were entirely destroyed. The contents belonged in part to the respondent and the remainder to some 350 customers. As

a result of this destruction, damage was sustained in the amount of $365,529.77 (f. 28). Suit was instituted in the District Court of the Southern District of New York for the loss sustained by the respondent personally and the goods of his various customers, to whom he was responsible under various warehousing agreements (ff. 15; 19; 24; 27).

Respondent is a resident of Lynchburg, Virginia (f. 9). Petitioner is a corporation organized under the laws of Pennsylvania (f. 8) having its principal place of business at Pittsburgh, Pennsylvania (f. 53). Petitioner filed a certificate designating the Secretary of State of the State of New York to accept service of process in its behalf in New York State (f. 76). It actually does business in New York State and maintains large offices at 17 Battery Place, Borough of Manhattan, City of New York (ff. 75; 53). It appears clear, therefore, that diversity of citizenship exists between the parties hereto in that respondent is a resident of Virginia and petitioner is a corporation organized under the laws of Pennsylvania. In addition, the amount sued for exceeds $3,000.00, exclusive of interest and costs (f. 28). After suit was started, petitioner moved by an order to show cause to dismiss the action on the ground that the District Court of the Southern District of New York should not accept jurisdiction of the action upon the following grounds:

A. That the venue is improper because this tort action arose in Virginia and the respondent is a resident of Virginia and the petitioner is a Pennsylvania corporation (f. 33).

B. On the further ground that it would not serve the convenience of the petitioner to try the action in this district (ff. 34-38).

The learned lower Court reached the conclusion that the venue in the Southern District of New York was technically proper (f. 140), but granted the motion to dismiss solely on the ground that in its discretion, the learned lower Court would refuse to assume jurisdiction (f. 140).

From this determination the respondent appealed to the Circuit Court of Appeals for the Second Circuit and the latter reversed and remanded the decision of the learned lower Court, upholding respondent's contention that the District Court did have jurisdicion (pp. 59-65). From this decision one Judge dissented (pp. 65-67).

A motion for re-hearing was thereafter made and was denied (p. 77). A petition for a writ of certiorari was then made by the petitioner and an order allowing the certiorari was granted on May 20, 1946 (p. 78).

POINT I

The District Court of the Southern District of New York has jurisdiction of the subject matter of this action and is the proper venue.

Respondent has brought this action against the petitioner to recover damages in the sum of $365,529.77 (f. 28) by reason of a fire and explosion which destroyed respondent's warehouse and the contents contained therein, caused by the alleged negligence of the petitioner (ff. 13, 14; 17, 18, 22, 23; 26, 27). The respondent resides at Lynchburg, Virginia (f. 9). Petitioner is a foreign corporation incorporated under the laws of Pennsylvania (f. 8) and has its principal office at Pittsburg, Pennsylvania (f. 53).

From these facts it appears that this is an action based on damages resulting from negligence and may be brought in the federal court solely by reason of the fact that it is based on diversity of citizenship and because the amount in controversy exceeds $3,000. In addition, the petitioner is doing business in the State of New York and maintains large offices at 17 Battery Place, Borough of Manhattan, City of New York (f. 8). Furthermore, in accordance with a certificate duly filed, petitioner appointed the Secretary of State of the State of New York to accept service of process that may be made upon it in New York State (f. 76).

The federal court has jurisdiction of the subject matter of the action by reason of the diversity of citizenship and the amount in controversy. The petitioner came before the District Court by reason of the service of process in the Southern District of New York upon its designated agent, the Secretary of State. As a general rule, in actions which come to the federal court solely by reason of diversity of citizenship, the action must be brought either in the district in which plaintiff resides or in that in which the defendant resides. (Section 112, Title 28, United States Annotated Code, formerly Section 51 of the Judicial Code.)

If jurisdiction can be obtained of a defendant in the district in which the plaintiff resides, the action may be brought in the district where the plaintiff resides. However, if the defendant cannot be found in the same district in which plaintiff resides, the suit can only be brought in the district of which he is a resident. The defendant's privilege to be sued in the district of its residence may be waived by failure to object or by conduct which amounts to submission.

General Investing Co. v. *Lake Shore Ry.*, 260 U. S. 261;

Commercial Casualty Co. v. *Consolidated Stone Co.*, 278 U. S. 177.

The designation by a corporation of an agent for acceptance of service in a jurisdiction other than that of the corporation's residence constitutes such a waiver. This principle finds full expression in the case of *Neirbo Co.* v. *Bethlehem Shipbuilding Corp.*, 308 U. S. 165.

This Court held that the action which was brought in New York could properly be tried there although both the plaintiff and the defendant were non-residents of the State of New York and of the district in which the action was brought. The reasoning behind the holding is clearly set forth in the opinion:

> "In conformity with what is now Section 210 of the General Corporation Law of New York, Bethlehem designated 'William J. Brown as the person upon whom a summons may be served within the State of New York.' The scope and meaning of such a designation as part of the bargain by which Bethlehem enjoys the business freedom of the State of New York have been authoritatively determined by the Court of Appeals speaking through Judge Cardozo * * * *Bagdon* v. *Philadelphia & R. Iron Co.*, 217 N. Y. 432. A statute calling for such a designation is constitutional and the designation of the agent a 'coluntary act' (*Pennsylvania Fire Ins. Co.* v. *Gold Issue Mining & Milling Co.*, 243 U. S. 93). In finding an actual consent by the Bethlehem to be sued in the courts of New York, federal as well as state, we are not subjecting federal procedure to the requirements of New York law. We are recognizing that state legislation

and consent of parties may bring about a set of facts which will authorize the courts of the United States to take cognizance of a case."

This interpretation of the law was reaffirmed by the United States Supreme Court in the case of *Oklahoma Packing Co.* v. *Oklahoma Gas & Electric Co.*, 309 U. S. 4.

Quite recently the District Court for the Southern District of New York has held that a suit brought by a Delaware corporation against an Ohio corporation, which designated an agent in New York for the service of process, could be brought in New York and the venue was properly laid in New York although both parties were non-residents of the State of New York. *Detachable Bit Co. v. Timken Roller Bearing Co.*, 31 Fed. Supp. 632.

Likewise, the Federal Court in the State of Texas held that a suit could properly be brought in the Federal Courts of Texas by a resident of Oklahoma against a resident of Delaware where the defendant had designated an agent to accept service in the State of Texas. *Ferguson* v. *Dixie Motor Coach Corp.*, 48 Fed. Supp. 746. To the same effect, see *Langan* v. *Roberts Bros., Inc.*, 51 Fed. Supp. 502.

From the foregoing authorities, it is clearly apparent that an action may be brought in any district in a state where a non-resident corporation has designated an agent to accept process in its behalf. The designation of the agent constitutes a voluntary waiver on the part of the defendant to have suits brought solely in the district in which the plaintiff or the defendant resides.

Under these cases, it seems well settled that an action may be brought in a district in which neither party is a resident.

Neirbo Co. v. *Bethlehem Shipbuilding Co.*, 308 U. S. 165;
Graver Tank & Mfg. Corp. v. *New England Terminal Co.*, 125 F. (2d) 71.

POINT II

An action which is transitory in nature may be tried in any jurisdiction in which the defendant can be found and the Court must accept jurisdiction if the parties are properly before it.

The learned District Court recognized the soundness of the decisions covered under Point I of this brief and in its opinion stated that the venue in the case at bar is not improper by reason of any technical reason, but declined to assume jurisdiction solely in the exercise of its discretion. The Circuit Court of Appeals, in reversing this holding in the majority opinion (pp. 59-65), in effect held that the assumption of jurisdiction in a tort case of this character is not subject to discretion. The dissenting opinion of the learned Justice Augustus N. Hand (pp. 65-67) appears to hold that the federal court may in a tort case of this type refuse jurisdiction in its discretion on the ground that the venue selected is a *forum non-conveniens* (p. 66).

In reviewing a long line of precedents, we find that in transitory tort actions the federal courts have felt impelled to accept jurisdiction if the parties were properly before it, regardless of where the tort occurred.

In the leading case of *Dennick* v. *Central R.R. Co.*, 103 U. S. 11, the facts showed that the deceased died in New Jersey of injuries sustained in that jurisdiction. Suit was

instituted in New York by an administratrix appointed in New York. The Court overruled defendant's objection to the venue when the case was instituted in New York:

> "The action in the present case is in the nature of a trespass to the person, always held to be transitory, and the venue immaterial. The local court in New York and the Circuit Court for the United States for the Northern District were competent to try such a case when the parties were properly before it."

This decision was approved in *Atcheson Ry. Co.* v. *Sowers*, 213 U. S. 55, where a citizen of Arizona recovered in a Texas court for injuries occurring in New Mexico.

In the case of *Barrow Steamship Co.* v. *Kane*, 170 U. S. 100, the plaintiff was a resident of New Jersey. He sued a corporation organized under the laws of Great Britain, which had an agent and an office in New York, in the Southern District of New York, for a personal assault and injury which took place in Londonderry, Ireland. The Court held that the federal court must assume jurisdiction of the action:

> "The present action was brought by a citizen and resident of the State of New Jersey in a Circuit Court of the United States held within the State of New York, against a foreign corporation doing business in the latter state. It was for a personal tort committed abroad, such as would have been actionable if committed in the State of New York or elsewhere in this country, and an action for which might be maintained in any Circuit Court of the United States which acquired jurisdiction of the defendant. (*Railroad Company* v. *Harris*, 12 Wall. 65; *Dennick* v. *Central R.R. Co.*, 103 U. S. 11; *Huntington* v. *Attwill*, 146 U. S. 657; *Stewart* v. *Baltimore & Ohio R.R.*

Co., 168 U. S. 445.) The summons was duly served upon the regularly appointed agent of the corporation in New York. (*In re Hohorst*, 156 U. S. 653.) The action was within the general jurisdiction conferred by Congress upon the Circuit Court of the United States. The fact that the legislature of the State of New York does not see fit to authorize like suits to be brought in its own courts by citizens and residents of other states cannot deprive such citizens of their right to invoke the jurisdiction of the national courts under the Constitution and laws of the United States."

The rule is well stated in the opinion in the case of *Kroger Grocery Co.* v. *Reddin*, 128 F. (2nd) 787:

> "From the standpoint of justice, morals and common sense there is no reason why a transitory cause of action, whether recognized by common law or created by statute, should not be enforceable in accordance with the substantive law of the State where the cause of action arose, in any Court in the country which has jurisdiction of the subject matter and can obtain jurisdiction of the parties."

See also:

St. Bernard v. *Shane*, 220 Fed. 852;

Mattison v. *Boston & Maine R. R. Co.*, 205 Fed. 821;

Stewart v. *Baltimore & Ohio Railroad Co.*, 168 U. S. 445;

Mann v. *Pacific Atlantic S. S. Co.*, 10 Fed. Supp. 527;

Rose v. *Phillips Packing Co.*, 21 Fed. Supp. 485;

In *Evey* v. *Mexican Central R. R. Co.*, 81 Fed. 294, the Court held that under the authority of *Dennick* v. *Central R. R. Co.*, 103 U. S. 11, the federal court must assume jurisdiction where the parties are before it and technical jurisdiction exists.

In the case of *Schendel* v. *McGee*, 300 Fed. 273, the Court squarely held that the federal courts are without discretion in the assumption of jurisdiction in a tort action:

> "Congress has not given to the Courts the right to exercise discretion as to whether the case should be prosecuted, or such prosecution refused, because the same may be a burden on commerce. It has given the right under the federal Employers Liability Act, hereinbefore discussed, to an injured party, or in case of his death to the duly constituted representative, to maintain an action for damages in the courts of the district where the defendant is doing business at the time the suit is commenced. We are not concerned with the justice or wisdom of such legislation. It being the law, it is a court's duty where there is jurisdiction, to take and retain that jurisdiction and try the case. The Supreme Court of the United States in the Second Employers Liability Cases, 223 U. S. 1, 58; 32 S. Ct. 169, 178; 56 L. Ed. 327; 38 LRA (NS)) 44; said: 'The existence of the jurisdiction creates an implication of duty to exercise it and that its exercise may be onerous does not militate against that implication.'"

Again in the case of *Wilcox* v. *Consolidated Gas Co.*, 212 U. S. 19, at page 40, the Supreme Court clearly and unequivocally set forth the doctrine that discretion does not exist to permit the denial of jurisdiction in a proper case:

"They assume to criticize that Court for taking jurisdiction of this case, as precipitate, as if it were a question of discretion or comity, whether or not that Court should have heard the case. On the contrary, there was no discretion or comity about it. When a federal court is properly appealed to in a case over which it has by law jurisdiction (*Cohen* v. *Virginia*, 6 Wheatley 264, 402), and in taking it that court cannot be truthfully spoken of as precipitate in its conduct. That the case may be one of local interest only is entirely immaterial, so long as the parties are citizens of different states or a question is involved which by law brings the case within the jurisdiction of a federal court. The right of a party plaintiff to choose a federal court where there is a choice cannot be properly denied."

In the case of *Smith* v. *Empire State Idaho Mining & Development Company*, 127 Fed. 462, a resident of Idaho sued a New York corporation for personal injuries sustained in Idaho in the Federal Court of the State of Washington. Jurisdiction of the defendant was procured by service of process on a resident agent. The Court discussed the matter of convenience of witnesses and the burden involved in bringing a suit in a foreign jurisdiction, and held, nevertheless, that it was compelled to assume jurisdiction.

"I deem it unnecessary to discuss these cases for the reason that the decision of this Court must be controlled by the decisions of the Supreme Court and the Circuit Court of Appeals for the Ninth Circuit in the following cases: *Dennick* v. *Railroad Company*, 103 U. S. 11; *New York R. Company* v. *Estelle*, 147 U. S. 591; *Stewart* v. *Railroad Company*, 168 U. S.

445; *Steamship Company* v. *Kane*, 170 U. S. 100; *Denver R. G. R. Company* v. *Roller*, 100 Fed. 738. * * * The jurisdiction does not rest upon comity but upon the positive provisions of law. Therefore, the Court has no discretionary power to refuse to take cognizance of the case."

In admiralty, this Court held that discretion could be exercised by a federal tribunal as to whether to assume or deny jurisdiction of a cause between foreigners to the tribunal.

The Belgenland, 114 U. S. 355;
Charter Shipping Co. v. *Bowring*, 281 U. S. 515.

In cases involving the internal affairs of a corporation, the federal courts have usually refused to exercise jurisdiction if the actions were brought in forums other than the domicile of the corporation. This exercise of discretion follows well defined law. The Supreme Court enunciated this doctrine in *Rogers* v. *Guaranty Trust Company of New York*, 288 U. S. 123.

"It has long been settled doctrine that a court, state or federal, sitting in one state will, as a general rule, decline to interfere with, or control by injunction or otherwise the management of the internal affairs of a corporation organized under the laws of another state, but will leave controversies as to such matters to the Courts of the State of the domicile."

To the same effect, see also:

Cohen v. *American Window Glass Co.*, 126 Fed. (2nd) 111;
Weiss v. *Routh*, 149 Fed. (2nd) 193.

However, even in this line of cases, unless great hardship or inconvenience will fall upon the corporation, it is an abuse of discretion for a federal court to deny jurisdiction in a forum other than that of corporate domicile.

Williams v. *Green Bay & Western R. Co.*, 90 L. Ed. (U. S.) 247;

Koster v. American Lumbermen's Mutual Cas. Co. (October 1945 Term, decided Feb. 4th, 1946, Docket No. 19927 U. S. C. C. A. (2nd Circuit)).

The petitioner in the original motion and on the appeal to the Circuit Court of Appeals and in its petition to this Court for the writ of certiorari, relied greatly on the decisions of the New York courts in *Gregonis* v. *P. R. Coal & Iron Co.*, 235 N. Y. 152 and *Murnan* v. *Wabash Railway Co.*, 246 N. Y. 244, in its contention that since New York courts in their discretion may assume or deny jurisdiction of tort actions involving non-residents, the federal district courts should do likewise. Both the majority and the dissenting opinions in the Circuit Court of Appeals hold that the federal courts are not bound by the rule as to jurisdiction in the New York State courts in a tort action (pp. 59-65; 65-67).

It would appear that the decision of this Court in *Barrow Steamship Co.* v. *Kane*, 170 U. S. 100, clearly disposes of this issue since in that case it was unequivocally held that the federal court will assume jurisdiction of a tort action arising between non-residents in New York although the New York courts refuse to accept such jurisdiction.

It is also well settled that venue and jurisdiction in the federal courts are not affected by State law or statute. This

proposition is well stated in the opinion of the Court in the case of *Anderson* v. *Standard Accident Insurance Company*, 36 Fed. Supp. 7:

> "In any event, the operation of no state law respecting the venue of causes can impair this jurisdiction and power of the District Courts of the United States. *Goldey* v. *Morning News of New Haven*, 156 U. S. 518; 15 Supreme Court, 559, 39 L. Ed. 517; *East Tennessee V. & G. R. Company et al.* v. *Atlanta & F. R. Co.*, C. C. S. D., Georgia, W. D. 1892, 49 F. 608, 15 L. R. A. 109; *Butler Bros. Shoe Co.* v. *U. S. Rubber Co.*, 8 Cir 1907, 156 Fed. 1; *Creager* v. *P. F. Collier & Son Co. et al.*, D. C. S. D., Texas, Brownsville 1929, 36 Fed. (2nd) 781; *Junk* v. *R. J. Reynolds Tobacco Co.*, D. C. W. D., Virginia 1938, 24 Supp. 716."

This Court was careful to reaffirm this doctrine in its decision in the case of *Neirbo Co.* v. *Bethlehem Shipbuilding Corp.*, 308 U. S. 165, where this Court expressly held that federal procedure was not subjected to the requirement of New York law although jurisdiction was conferred by service of process effected in accordance with Section 210 of The General Corporation Law of New York:

> "In finding an actual consent by the Bethlehem to be sued in the courts of New York federal as well as state, we are not subjecting federal procedure to the requirements of New York law. We are recognizing that state legislation and consent of parties may bring about a set of facts which will authorize the courts of the United States to take cognizance of a case."

POINT III

The petitioner will not be inconvenienced by a trial in the Southern District of New York and the matter of convenience does not govern the selection of a forum in a case of this type.

As pointed out in the majority opinion in the Circuit Court of Appeals in the case at bar, there is no statute at the present time providing for transfer of actions in the federal courts on the ground of convenience of parties and witnesses (p. 64).

This Court and other federal courts have expressly held that even though a defendant may be inconvenienced by being forced to defend an action in a forum selected by a plaintiff distant from the place where the tort occurred, still that would not constitute a ground for dismissal of the action, provided the Court had jurisdiction of the parties in accordance with the federal statutes.

In the case of *Chesapeake & Ohio R. R. Co. v. Vigor*, 90 Fed. 2d, 7, the Circuit Court of Appeals of the Sixth District held as follows:

> "The plaintiff, it is true, may suffer some inconvenience or be put to some extra expense in producing witnesses to testify in court in an Indiana case, but it is to be presumed that Congress considered such probably inconvenience and expense in placing jurisdiction of the action in any district in which the defendant should be doing business at the time."
>
> "We held that in *Southern Railroad Company* v. *Cochrane*, 56 Fed. 2d, 1019, the filing of a suit in

such a jurisdiction *even though it was inconvenient to the defendant*, was not enough to justify a court of equity in enjoining its prosecution in the face of the statute giving the right to bring the action in that jurisdiction."

See also:

Baltimore & Ohio R. R. Company v. *Clem*, 36 Fed. Supp. 703;
Schendel v. *McGee*, 300 Fed. 273;
Norris v. *Illinois Central R. R. Co.*, 18 F. (2d) 584;
Beem v. *Illinois Central R. R. Co.*, 55 F. (2d) 708.

In the case of *International Milling Co.* v. *Columbia Co.*, 292 U. S. 511, a suit was started in Minnesota by a Delaware corporation against another Delaware corporation for damage to cargo which occurred between Buffalo and Chicago. It was held that the convenience of witnesses did not deter from the duty of the Court to accept jurisdiction in the forum selected:

"The forum being in other respects appropriate, jurisdiction is not lost because the property subjected to the attachment is an instrumentality of commerce (Atchison, Topeka & Sante Fe Ry. Co. v. Wells, 265 U. S. 101; Davis v. Cleveland, C. & C. & St. Louis R. R., 217 U. S. 157) nor because the chief witnesses on the trial reside in other states, most of them, it seems, in Chicago, Illinois"

In the case of *Hoffman* v. *Foraker*, 274 U. S. 21, an action was brought in Missouri for injuries sustained by a resident of Kansas in the State of Kansas. It was held in

this Court that the convenience of witnesses did not act as a determining factor and that the expenses of bringing witnesses to the scene of the trial was not an undue burden in interstate commerce.

In the case of *Denver & Rio Grande W. R. Co.* v. *Terti*, 284 U. S. 284, it appeared that a resident of Missouri brought suit against a foreign railroad corporation in Missouri for injuries sustained in Colorado. The Court, in upholding jurisdiction, held:

> "Further, as a practical matter, courts could not undertake to ascertain in advance of trial the number and importance of probable witnesses within and without the state and retain or refuse jurisdiction according to the relative inconvenience of the parties."

In the case of *Baltimore & Ohio R. R. Company* v. *Kepner*, 314 U. S. 44, the facts showed that the action arose in Ohio. The plaintiff was a resident of Ohio. The defendant had a railroad line running in Ohio. The action was brought in the Eastern District of New York, where the defendant was doing business. The action was brought 700 miles from the place of residence of both the plaintiff and the defendant and yet it was held by the majority opinion of the United States Supreme Court that the action could be brought in the venue selected by the plaintiff, although the Federal Employers Act specified that the action could be brought in district of residence of the defendant, or where the action arose, or where the defendant is an inhabitant.

In the case of *Miles* v. *Illinois Central R. R.*, 315 U. S. 698, this Court, following its holding in the *Baltimore &*

Ohio R. R. Company v. *Kepner* case, *supra*, refused to enjoin a suit in Missouri brought by the plaintiff, a resident of Tennessee, against the defendant, a resident of Tennessee, for an action which arose in Memphis, Tennessee. Again, the Court expressly held that although the defendant was inconvenienced by having the suit brought so far distant from the place where the parties resided and the action arose, still that was no bar to the bringing of the action in the forum selected by the plaintiff.

The petitioner urged in the original motion that it would be very convenient to have this action brought in Lynchburg, Virginia, where the respondent resides (f. 34). The petitioner cannot restrict respondent and compel him to bring the action solely in the district in which the respondent resides. The respondent is at liberty to bring the action in the District Court in which petitioner resides (Section 112, Title 28, U. S. Annotated Code), or in any district in which the petitioner has permitted itself to be sued. (*Neirbo Co.* v. *Bethlehem Shipbuilding Corp.*, 308 U. S. 165.)

From an equitable and practical point of view, the respondent could with perfect right sue the petitioner where it is a resident, namely, in the district of which Pittsburgh is a part. Under such circumstances the petitioner could not complain of improper venue. Pittsburgh is approximately 500 miles from Lynchburg, Virginia. New York is about 400 miles from Lynchburg, Virginia, with excellent railroad connections. In effect, the petitioner is trying to establish a rule of law which would make it necessary to have an action brought solely at the place of occurrence.

Section 112, Title 28, of the U. S. Annotated Code makes provision for actions to be brought only in the residence of

either the plaintiff or the defendant. In the case at bar, if we assume that the respondent merely owned the property in Lynchburg, but resided in some other state, could the petitioner complain if suit were brought where the respondent resided, if jurisdiction could be procured over the petitioner in such a place, or else in the state of the petitioner's residence? Under such a set of facts the place where the action occurred could not be the venue unless the petitioner happened to be doing business in that particular jurisdiction, and yet the petitioner would be in the same position in which it now finds itself.

It would indeed be setting up a very narrow and dangerous precedent to hold that actions must be brought only where they occur so long as the plaintiff resides there or the defendant can be found there. But regardless, under the facts in this case, the petitioner's claim as to great hardship and inconvenience is groundless.

There is no dispute, and the petitioner does not claim that there is any eye witness to this occurrence other than the driver of the truck and the respondent and his employees (ff. 88-89).

The plaintiff has the burden of proving this case by a preponderance of evidence and the plaintiff must of necessity produce the eye witnesses to this case in order to prove it, and these persons will be produced upon the trial.

The fire officials who appeared after the fire are perfectly willing to appear in the jurisdiction in which the action was started. The engineers and other experts who examined the site of the fire and the explosion and who made their findings all are residents of New York City (f. 89). The appraiser who examined the property which was damaged resides in North Carolina. The experts which the

petitioner will produce are certainly under its control and can be brought anywhere, and, as a matter of fact, none of these experts reside in Lynchburg.

The proof of damage rests upon the respondent. Although there were 350 customers, in addition to the plaintiff himself, whose goods were damaged as a result of this disastrous fire and explosion, very many of these parties are no longer in Lynchburg. Because of war conditions they have scattered to various parts of the country. The Court will almost take judicial notice of the fact that persons who store their goods in storage warehouses normally depart from the locality in which those warehouses are located.

The respondent and experts whom he employed made detailed examinations of these goods and they are in a position to prove in a great many instances the value of the damaged property. In all other cases it will be incumbent upon the respondent to produce the necessary proof as to damage. The petitioner can certainly not complain of inconveniences as to proof which the respondent must adduce.

The petitioner claims that various local ordinances are involved in this case. There should be no difficulty whatsoever in the proof of such ordinances. They are codified, bound and certified and are readily obtainable and provable. Their accuracy can be attested to by a deposition of the clerk of the City of Lynchburg. This Court has only recently held that difficulty of interpreting local law does not act as a deterrent to a federal court in assuming jurisdiction of a case properly within its jurisdiction. (*Meredith* v. *Winter Haven*, 320 U. S. 228.)

In the final analysis the respondent must prove his case by a preponderance of evidence. It is incumbent upon the

respondent to produce full and complete proof or fail in this action, and the respondent is fully prepared to fulfill his burden.

The arguments by the petitioner attempt to limit the respondent to a suit solely in Lynchburg (ff. 116-117). This Court can readiiy realize that an action of this type, involving as it does a claim for damages in an amount close to $400,000, is one which may stagger the imagination of a local jury which is surely unaccustomed to dealing with amounts of such a nature. Furthermore, removed from Lynchburg, the respondent will have an opportunity to try this case free from local influences and preconceived notions which may make it difficult to procure a jury which has no previous knowledge of any of the facts herein.

As pointed out in the previously cited cases in this section of the brief, the federal courts by extension of the right to bring a tort action in any venue in which the defendant can be found, have approved actions in localities which in some instances cause inconvenience or additional expense to a defendant. However, the inconvenience which may be suffered in this case is not of an extremely unbearable or extremely expensive nature. The petitioner is a large and well organized corporation having full and complete facilities to handle matters of this kind in the Southern District of New York, where it maintains large and complete offices. The fact that it is doing business in the very district in which the suit has been brought is a factor to be considered in the matter of possible inconvenience. (*International Milling Co.* v. *Columbia Co.*, 292 U. S. 511, at p. 520.)

The further argument raised by the petitioner to the effect that it would like to implead Jennings-Watts Oil Com-

pany, Inc., a resident of Lynchburg, Virginia, does not have any bearing in this action (ff. 50, 51). The petitioner states that there exists between Jennings-Watts Oil Company, Inc. and itself a contract which was in full force and effect on March 8th, 1944, containing an indemnity clause by means of which Jennings-Watts Oil Company, Inc. will indemnify the petitioner against loss such as the one alleged in the complaint (f. 51). If this action were brought in Pennsylvania in the district in which petitioner resides, certainly the petitioner could not implead Jennings-Watts Oil Company, Inc. However, that would have no bearing on the ability of the petitioner to recoup its loss in a separate action based on the contract of indemnification. These contracts, as the Court well knows, give the right to the petitioner or to any party similarly situated, to settle any action in an amount which is deemed fair and gives recourse for indemnification in the event that any loss is actually sustained by the party sought to be indemnified. The petitioner, therefore, can in no way be prejudiced in the final analysis if it cannot implead the Jennings-Watts Oil Company, Inc. in this action. The respondent is certainly not bound to seek a forum in which the petitioner is able to bring in all the other parties whom it may see fit to join as defendants. To do so would make it manifestly impossible to try any law suit since there may always be some defendants who cannot be reached with process in the district in which the action is properly brought.

POINT IV

That the order of the Circuit Court of Appeals reversing the order and judgment of the District Court should be affirmed.

1. The District Court has jurisdiction of the subject matter of the action which is a tort arising between citizens of different states and involving an amount over $3,000.

2. The defendant has been served by service of process upon it through a designated agent appointed pursuant to the Corporation Law of the State of New York.

3. That under such circumstances the Federal Court is without discretion and must assume jurisdiction.

4. That no facts showing substantial inconvenience or hardship to be suffered by the petitioner exist herein.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

No. 93.—October Term, 1946.

Gulf Oil Corporation, Petitioner, *v.* Cornelius Gilbert, doing business under the firm name and style of Gilbert Storage & Transfer Company.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[March 10, 1947.]

Mr. Justice Jackson delivered the opinion of the Court.

The questions are whether the United States District Court has inherent power to dismiss a suit pursuant to the doctrine of *forum non conveniens* and, if so, whether that power was abused in this case.

The respondent-plaintiff brought this action in the Southern District of New York, but resides at Lynchburg, Virginia, where he operated a public warehouse. He alleges that the petitioner-defendant, in violation of the ordinances of Lynchburg, so carelessly handled a delivery of gasoline to his warehouse tanks and pumps as to cause an explosion and fire which consumed the warehouse building to his damage of $41,889.10, destroyed merchandise and fixtures to his damage of $3,602.40, caused injury to his business and profits of $20,038.27, and burned the property of customers in his custody under warehousing agreements to the extent of $300,000. He asks judgment of $365,529.77 with costs and disbursements, and interest from the date of fire. The action clearly is one in tort.

The petitioner-defendant is a corporation organized under the laws of Pennsylvania, qualified to do business in both Virginia and New York, and it has designated officials of each state as agents to receive service of process.

When sued in New York, the defendant, invoking the doctrine of *forum non conveniens*, claimed that the appropriate place for trial is Virginia where the plaintiff lives and defendant does business, where all events in litigation took place, where most of the witnesses reside, and where both state and federal courts are available to plaintiff and are able to obtain jurisdiction of the defendant.

The case, on its merits, involves no federal question and was brought in the United States District Court solely because of diversity in citizenship of the parties. Because of the character of its jurisdiction and the holdings of and under *Erie Railroad Co.* v. *Tompkins*, 304 U. S. 64, the District Court considered that the law of New York as to *forum non conveniens* applied and that it required the case to be left to Virginia courts.[1] It therefore dismissed.

The Circuit Court of Appeals disagreed as to the applicability of New York law, took a restrictive view of the application of the entire doctrine in federal courts and, one judge dissenting, reversed.[2] The case is here on certiorari. 328 U. S. 830.

I.

It is conceded that the venue statutes of the United States permitted the plaintiff to commence his action in the Southern District of New York and empower that court to entertain it.[3] But that does not settle the question whether it must do so. Indeed, the doctrine of *forum non conveniens* can never apply if there is absence of jurisdiction or mistake of venue.

This Court, in one form of words or another, has repeatedly recognized the existence of the power to decline

[1] *Gilbert* v. *Gulf Oil Corp.*, 62 F. Supp. 291.

[2] *Gilbert* v. *Gulf Oil Corp.*, 153 F. (2d) 888.

[3] See 28 U. S. C. § 112; *Neirbo Co.* v. *Bethlehem Shipbuilding Corp., Ltd.*, 308 U. S. 165.

jurisdiction in exceptional circumstances. As formulated by Mr. Justice Brandeis, the rule is:

"Obviously, the proposition that a court having jurisdiction must exercise it, is not universally true; else the admiralty court could never decline jurisdiction on the ground that the litigation is between foreigners. Nor is it true of courts administering other systems of our law. Courts of equity and of law also occasionally decline, in the interest of justice, to exercise jurisdiction, where the suit is between aliens or non-residents or where for kindred reasons the litigation can more appropriately be conducted in a foreign tribunal." *Canada Malting Co., Ltd.*, v. *Paterson Steamships, Ltd.*, 285 U. S. 413, 422–23.

We later expressly said that a state court "may in appropriate cases apply the doctrine of *forum non conveniens*." *Broderick* v. *Rosner*, 294 U. S. 629, 643; *Williams* v. *North Carolina*, 317 U. S. 287, 294, n. 5. Even where federal rights binding on state courts under the Constitution are sought to be adjudged, this Court has sustained state courts in a refusal to entertain a litigation between a nonresident and a foreign corporation or between two foreign corporations. *Douglas* v. *New York, N. H. & H. R. R.*, 279 U. S. 377; *Anglo-American Provision Co.* v. *Davis Provision Co. No. 1*, 191 U. S. 373. It has held the use of an inappropriate forum in one case an unconstitutional burden on interstate commerce. *Davis* v. *Farmers Co-operative Equity Co.*, 262 U. S. 312. On substantially *forum non conveniens* grounds we have required federal courts to relinquish decision of cases within their jurisdiction where the court would have to participate in the administrative policy of a state. *Railroad Commission* v. *Rowan & Nichols Oil Co.*, 311 U. S. 570; *Burford* v. *Sun Oil Co.*, 319 U. S. 315; but *cf. Meredith* v. *Winter Haven*, 320 U. S. 228. And most recently we decided *Williams* v. *Green Bay & Western R. R. Co.*, 326 U. S. 549, in which the Court, without questioning the validity of the

doctrine, held it had been applied in that case without justification.[4]

It is true that in cases under the Federal Employers' Liability Act we have held that plaintiff's choice of a forum cannot be defeated on the basis of *forum non conveniens*. But this was because the special venue act under which those cases are brought was believed to require it. *Baltimore & Ohio R. R.* v. *Kepner*, 314 U. S. 44; *Miles* v. *Illinois Central R. R.*, 315 U. S. 698. Those decisions do not purport to modify the doctrine as to other cases governed by the general venue statutes.

But the court below says that "The Kepner case . . . warned against refusal of jurisdiction in a particular case controlled by congressional act; here the only difference is that congressional act, plus judicial interpretation (under the Neirbo case), spells out the result." 153 F. (2d) at 885. The Federal Employers' Liability Act, however, which controlled decision in the *Kepner* case, specifically provides where venue may be had in any suit on a cause of action arising under that statute. What the court below refers to as "congressional act, plus judicial interpretation," is the general statute of venue in diversity suits, plus our decision that it gives the defendant "a personal privilege respecting the venue, or place of suit, which he may assert, or may waive, at his election," *Neirbo* v. *Beth-*

[4] The doctrine did not originate in federal but in state courts. This Court in recognizing and approving it by name has never indicated that it was rejecting application of the doctrine to law actions which had been an integral and necessary part of evolution of the doctrine. And *cf. Slater* v. *Mexican National R. R.*, 194 U. S. 120. Wherever it is applied in courts of other jurisdictions, its application does not depend on whether the action is at law, *Collard* v. *Beach*, 93 App. Div. 339 (N. Y.); *Murnan* v. *Wabash Rwy. Co.*, 246 N. Y. 244; *Jackson & Sons* v. *Lumbermen's Mutual Casualty Co.*, 86 N. H. 341; or in equity, *Langfelder* v. *Universal Laboratories*, 293 N. Y. 200; *Egbert* v. *Short*, [1907] 2 Ch. 250. See footnote 1, *Koster* v. (*American*) *Lumbermens Mutual Casualty Co.*, decided this day.

lehem Shipbuilding Corp., Ltd., 308 U. S. 165, 168. The Federal Employers' Liability Act, as interpreted by *Kepner*, increases the number of places where the defendant may be sued and makes him accept the plaintiff's choice. The *Neirbo* case is only a declaration that if the defendant, by filing consent to be sued, waives its privilege to be sued at its place of residence, it may be sued in the federal courts at the place where it has consented to be sued. But the general venue statute plus the *Neirbo* interpretation do not add up to a declaration that the court must respect the choice of the plaintiff, no matter what the type of suit or issues involved. The two taken together mean only that the defendant may consent to be sued, and it is proper for the federal court to take jurisdiction, not that the plaintiff's choice cannot be questioned. The defendant's consent to be sued extends only to give the court jurisdiction of the person; it assumes that the court, having the parties before it, will apply all the applicable law, including, in those cases where it is appropriate, its discretionary judgment as to whether the suit should be entertained. In all cases in which the doctrine of *forum non conveniens* comes into play, it presupposes at least two forums in which the defendant is amenable to process; the doctrine furnishes criteria for choice between them.

II.

The principle of *forum non conveniens* is simply that a court may resist imposition upon its jurisdiction even when jurisdiction is authorized by the letter of a general venue statute. These statutes are drawn with a necessary generality and usually give a plaintiff a choice of courts, so that he may be quite sure of some place in which to pursue his remedy. But the open door may admit those who seek not simply justice but perhaps justice blended with some harassment. A plaintiff sometimes is under temptation

to resort to a strategy of forcing the trial at a most inconvenient place for an adversary, even at some inconvenience to himself.

Many of the states have met misuse of venue by investing courts with a discretion to change the place of trial on various grounds, such as the convenience of witnesses and the ends of justice.[5] The federal law contains no such express criteria to guide the district court in exercising its power. But the problem is a very old one affecting the administration of the courts as well as the rights of litigants, and both in England and in this country the common law worked out techniques and criteria for dealing with it.[6]

Wisely, it has not been attempted to catalogue the circumstances which will justify or require either grant or denial of remedy. The doctrine leaves much to the discretion of the court to which plaintiff resorts, and experience has not shown a judicial tendency to renounce one's own jurisdiction so strong as to result in many abuses.[7]

If the combination and weight of factors requisite to given results are difficult to forecast or state, those to be considered are not difficult to name. An interest to be considered, and the one likely to be most pressed, is the private interest of the litigant. Important considerations are the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises, if view would be appropriate to the action; and all other practical problems that

[5] See Foster, *Place of Trial—Interstate Application of Intrastate Methods of Adjustment*, 44 Harv. L. Rev. 41, 47, 62.

[6] See *Logan* v. *Bank of Scotland*, [1906] 1 K. B. 141; *cf. La Société du Gaz de Paris* v. *La Société Anonyme de Navigation "Les Armateurs Francais,"* [1926] Sess. Cas. (H. L.) 13. *Collard* v. *Beach*, 93 App. Div. 339 (N. Y.); *Jackson & Sons* v. *Lumbermen's Mutual Casualty Co.*, 86 N. H. 341; see *Pietraroia* v. *New Jersey and Hudson R. R. Co.*, 197 N. Y. 434; *Great Western Railway Co.* v. *Miller*, 19 Mich. 305.

[7] See Dainow, *The Inappropriate Forum*, 29 Ill. L. Rev. 867, 889.

make trial of a case easy, expeditious and inexpensive. There may also be questions as to the enforcibility of a judgment if one is obtained. The court will weigh relative advantages and obstacles to fair trial. It is often said that the plaintiff may not, by choice of an inconvenient forum, "vex," "harass," or "oppress" the defendant by inflicting upon him expense or trouble not necessary to his own right to pursue his remedy.[8] But unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed.

Factors of public interest also have place in applying the doctrine. Administrative difficulties follow for courts when litigation is piled up in congested centers instead of being handled at its origin. Jury duty is a burden that ought not to be imposed upon the people of a community which has no relation to the litigation. In cases which touch the affairs of many persons, there is reason for holding the trial in their view and reach rather than in remote parts of the country where they can learn of it by report only. There is a local interest in having localized controversies decided at home. There is an appropriateness, too, in having the trial of a diversity case in a forum that is at home with the state law that must govern the case, rather than having a court in some other forum untangle problems in conflict of laws, and in law foreign to itself.

The law of New York as to the discretion of a court to apply the doctrine of *forum non conveniens*, and as to the standards that guide discretion is, so far as here involved, the same as the federal rule. *Murnan* v. *Wabash Rwy. Co.*, 246 N. Y. 244; *Wedemann* v. *United States Trust Co.*, 258 N. Y. 315; see *Gregonis* v. *Philadelphia and Reading Co.*, 235 N. Y. 152. It would not be profitable, therefore, to pursue inquiry as to the source from which our rule must flow.

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[8] See Blair, *The Doctrine of Forum Non Conveniens in Anglo-American Law*, 29 Col. L. Rev. 1.

III.

Turning to the question whether this is one of those rather rare cases where the doctrine should be applied, we look first to the interests of the litigants.

The plaintiff himself is not a resident of New York, nor did any event connected with the case take place there, nor does any witness with the possible exception of experts live there. No one connected with that side of the case save counsel for the plaintiff resides there, and he has candidly told us that he was retained by insurance companies interested presumably because of subrogation. His affidavits and argument are devoted to controverting claims as to defendant's inconvenience rather than to showing that the present forum serves any convenience of his own, with one exception. The only justification for trial in New York advanced here is one rejected by the district court and is set forth in the brief as follows:

> "This Court can readily realize that an action of this type, involving as it does a claim for damages in an amount close to $400,000, is one which may stagger the imagination of a local jury which is surely unaccustomed to dealing with amounts of such a nature. Furthermore, removed from Lynchburg, the respondent will have an opportunity to try this case free from local influences and preconceived notions which make it difficult to procure a jury which has no previous knowledge of any of the facts herein."

This unproven premise that jurors of New York live on terms of intimacy with $400,000 transactions is not an assumption we easily make. Nor can we assume that a jury from Lynchburg and vicinity would be "staggered" by contemplating the value of a warehouse building that stood in their region, or of merchandise and fixtures such as were used there, nor are they likely to be staggered by the value of chattels which the people of that neighborhood put in storage. It is a strange argument on behalf

of a Virginia plaintiff that the community which gave him patronage to make his business valuable is not capable of furnishing jurors who know the value of the goods they store, the building they are stored in, or the business their patronage creates. And there is no specification of any local influence, other than accurate knowledge of local conditions, that would make a fair trial improbable. The net of this is that we cannot say the District Court was bound to entertain a provincial fear of the provincialism of a Virginia jury. That leaves the Virginia plaintiff without even a suggested reason for transporting this suit to New York.

Defendant points out that not only the plaintiff, but every person who participated in the acts charged to be negligent, resides in or near Lynchburg. It also claims a need to interplead an alleged independent contractor which made the delivery of the gasoline and which is a Virginia corporation domiciled in Lynchburg, that it cannot interplead in New York. There also are approximately 350 persons residing in and around Lynchburg who stored with plaintiff the goods for the damage to which he seeks to recover. The extent to which they have left the community since the fire and the number of them who will actually be needed is in dispute. The complaint alleges that defendant's conduct violated Lynchburg ordinances. Conditions are said to require proof by firemen and by many others. The learned and experienced trial judge was not unaware that litigants generally manage to try their cases with fewer witnesses than they predict in such motions as this. But he was justified in concluding that this trial is likely to be long and to involve calling many witnesses, and that Lynchburg, some 400 miles from New York, is the source of all proofs for either side, with possible exception of experts. Certainly to fix the place of trial at a point where litigants cannot compel personal attendance and may be forced to

try their cases on deposition, is to create a condition not satisfactory to court, jury or most litigants. Nor is it necessarily cured by the statement of plaintiff's counsel that he will see to getting many of the witnesses to the trial and that some of them "would be delighted to come to New York to testify." There may be circumstances where such a proposal should be given weight. In others, the offer may not turn out to be as generous as defendant or court might suppose it to be. Such matters are for the District Court to decide in exercise of a sound discretion.

The court likewise could well have concluded that the task of the trial court would be simplified by trial in Virginia. If trial was in a state court, it could apply its own law to events occurring there. If in federal court by reason of diversity of citizenship, the court would apply the law of its own state in which it is likely to be experienced. The course of adjudication in New York federal court might be beset with conflict of laws problems all avoided if the case is litigated in Virginia where it arose.

We are convinced that the District Court did not exceed its powers or the bounds of its discretion in dismissing plaintiff's complaint and remitting him to the courts of his own community. The Circuit Court of Appeals took too restrictive a view of the doctrine as approved by this Court. Its judgment is

Reversed.

MR. JUSTICE REED and MR. JUSTICE BURTON dissent. They do not set out the factual reasons for their dissent since the Court's affirmance of *Koster* v. *Lumbermens Mutual Casualty Co.*, No. 206, decided today, would control.

SUPREME COURT OF THE UNITED STATES

No. 93.—October Term, 1946.

Gulf Oil Corporation, Petitioner;
v.
Cornelius Gilbert, doing business under the firm name and style of Gilbert Storage & Transfer Company.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[March 10, 1947.]

Mr. Justice Black, dissenting.

The defendant corporation is organized under the laws of Pennsylvania, but is qualified to do business and maintains an office in New York. Plaintiff is an individual residing and doing business in Virginia. The accident in which plaintiff alleges to have been damaged occurred in Lynchburg, Virginia. Plaintiff brought this action in the Federal District Court in New York. Section 11 of the Judiciary Act of 1789, 1 Stat. 78, carried over into the Judicial Code, § 24, 28 U. S. C. § 41 (1), confers jurisdiction upon federal district courts of all actions at law between citizens of different states. The Court does not suggest that the federal district court in New York lacks jurisdiction under this statute or that the venue was improper in this case. 28 U. S. C. § 112. *Cf. Neirbo* v. *Bethlehem Steel Corp.*, 308 U. S. 165. But it holds that a district court may abdicate its jurisdiction when a defendant shows to the satisfaction of a district court that it would be more convenient and less vexatious for the defendant if the trial were held in another jurisdiction. Neither the venue statute nor the statute which has governed jurisdiction since 1789 contains any indication or implication that a federal district court, once satisfied that jurisdiction and venue requirements have been met, may decline to exercise its jurisdiction. Except

in relation to the exercise of the extraordinary admiralty and equity powers of district courts, this Court has never before held contrary to the general principle that "the courts of the United States are bound to proceed to judgment and to afford redress to suitors before them in every case to which their jurisdiction extends. They cannot abdicate their authority or duty in any case in favor of another jurisdiction." *Hyde* v. *Stone*, 20 How. 170, 175, quoted with approval in *Chicot County* v. *Sherwood*, 148 U. S. 529, 534. See also *Dennick* v. *Railroad Co.*, 103 U. S. 11; *Baltimore & O. R. Co.* v. *Kepner*, 314 U. S. 44; *Evey* v. *Mexican C. R. Co.*, 81 Fed. 294.[1] Never until today has this Court held, in actions for money damages for violations of common law or statutory rights, that a district court can abdicate its statutory duty to exercise its jurisdiction for the alleged convenience of the defendant to a lawsuit. Compare *Slater* v. *Mexican National R. Co.*, 194 U. S. 120.

For reasons peculiar to the special problems of admiralty and to the extraordinary remedies of equity, the courts exercising admiralty and equity powers have been permitted at times to decline to exercise their jurisdiction. *Canada Malting Co.* v. *Paterson S. S. Co.*, 285 U. S. 413; *Rogers* v. *Guaranty Trust Co.*, 288 U. S. 123; *cf. Williams* v. *Green Bay & W. R. Co.*, 326 U. S. 549. This exception is rooted in the kind of relief which these courts grant and the kinds of problems which they solve. See *Meredith* v. *Winter Haven*, 320 U. S. 228, 235; *Burford* v. *Sun Oil Co.*, 319 U. S. 315, 333 n. 29. Courts of equity developed to afford relief where a money judgment in the common law courts provided no adequate remedy for an injured per-

[1] In *Mondou* v. *New York, N. H. & H. R. Co.*, 223 U. S. 1, 58, it was stated that: "The existence of the jurisdiction creates an implication of duty to exercise it, and that its exercise may be onerous does not militate against that implication." *Cf. Douglas* v. *New York, N. H. & H. R. Co.*, 279 U. S. 377, 388.

son.[2] From the beginning of equitable jurisdiction up to now, the chancery courts have generally granted or withheld their special remedies at their discretion; and "courts of Admiralty . . . act upon enlarged principles of equity." *O'Brien* v. *Miller*, 168 U. S. 287, 297. But this Court has, on many occasions, severely restricted the discretion of district courts to decline to grant even the extraordinary equitable remedies. *Meredith* v. *Winter Haven*, *supra*, and cases there cited at 234, 235. Previously federal courts have not generally been allowed the broad and indefinite discretion to dispose even of equity cases solely on a trial court's judgment of the relative convenience of the forum for the parties themselves. For a major factor in these equity decisions has been the relative ability of the forum to shape and execute its equitable remedy. *Cf. Rogers* v. *Guaranty Trust Co.*, *supra*.

No such discretionary authority to decline to decide a case, however, has, before today, been vested in federal courts in actions for money judgments deriving from statutes or the common law.[3] To engraft the doctrine of *forum non conveniens* upon the statutes fixing

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[2] Although the distinction between actions at law and suits in equity in federal courts has been abolished by the adoption of the single form of civil action, Rule 2, F. R. C. P., see 1 Moore, Federal Practice (1938) c. 2, there remains to federal courts the same discretion, no more and no less, in the exercise of special equitable remedies as existed before the adoption of the federal rules. Neither the rules, the statutes, tradition, nor practical considerations justify application of equitable discretion to actions for money judgments based on common law or statutory rights.

[3] This Court, whose jurisdiction is primarily appellate, has held that it need not exercise its constitutionally granted original jurisdiction even at common law where there is another suitable forum. *Georgia v. Pennsylvania R. Co.*, 324 U. S. 439, 464–65. But the Constitution, not Congress, fixes this Court's jurisdiction. And it was this Court's duty to interpret its constitutional jurisdiction. It is the duty of Congress to fix the jurisdiction of the district courts by statute. It did so. It is not the duty of this Court to amend that statute.

jurisdiction and proper venue in the district courts in such actions, seems to me to be far more than the mere filling in of the interstices of those statutes.[4]

It may be that a statute should be passed authorizing the federal district courts to decline to try so-called common law cases according to the convenience of the parties. But whether there should be such a statute, and determination of its scope and the safeguards which should surround it, are, in my judgment, questions of policy which Congress should decide. There are strong arguments presented by the Court in its opinion why federal courts exercising their common law jurisdiction should have the discretionary powers which equity courts have always possessed in dispensing equitable relief. I think equally strong arguments could be advanced to show that they should not. For any individual or corporate defendant who does part of his business in states other than the one in which he is sued will almost invariably be put to some inconvenience to defend himself. It will be a poorly represented multi-state defendant who cannot produce substantial evidence and good reasons fitting the rule now adopted by this Court tending to establish that the forum of the action against him is most inconvenient. The Court's new rule will thus clutter the very threshold of the federal courts with a preliminary trial of fact concerning the relative convenience of forums. The preliminary disposition of this factual question will, I believe, produce the very kind of uncertainty, confusion, and hardship which stalled and handicapped persons seeking compensation for maritime

[4] "I recognize without hesitation that judges do and must legislate, but they can do so only interstitially; they are confined from molar to molecular motions." Holmes, J., dissenting in *Southern Pacific Co.* v. *Jensen*, 244 U. S. 205, 218, 221. See also dissenting opinion, *State Tax Commission* v. *Aldrich*, 316 U. S. 174, 185, 202, n. 23 and authorities there collected.

injuries following this Court's decision in *Southern Pacific Co.* v. *Jensen*, 244 U. S. 205. The broad and indefinite discretion left to federal courts to decide the question of convenience from the welter of factors which are relevant to such a judgment will inevitably produce a complex of close and indistinguishable decisions from which accurate prediction of the proper forum will become difficult, if not impossible. Yet plaintiffs will be asked "to determine with certainty before bringing their actions that factual question over which courts regularly divide among themselves and within their own membership." As penalty for error, the injured individual may not only suffer serious financial loss through the delay and expense of litigation, but discover that his claim has been barred by the statute of limitations in the proper forum while he was erroneously pursuing it elsewhere." *Davis* v. *Dept. of Labor & Industries*, 317 U. S. 249, 254.

This very case illustrates the hazards of delay. It must be begun anew in another forum after the District Court, the Circuit Court of Appeals, and now this Court, have had their time-consuming say as to the relative convenience of the forum in which the plaintiff chose to seek redress. Whether the statute of limitations has run against the plaintiff, we do not know. The convenience which the individual defendant will enjoy from the Court's new rule of *forum non conveniens* in law actions may be thought to justify its inherent delays, uncertainties, administrative complications and hardships. But in any event, Congress has not yet said so; and I do not think that this Court should, 150 years after the passage of the Judiciary Act, fill in what it thinks is a deficiency in the deliberate policy which Congress adopted.[5] Whether the doc-

[5] The very law review articles which are relied upon to document this theory of a federal rule of *forum non conveniens* reveal that judicial adoption of this theory without a new act of Congress would

trine of *forum non conveniens* is good or bad, I should wait for Congress to adopt it.

MR. JUSTICE RUTLEDGE joins in this opinion.

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be an unwarranted judicial innovation. Foster, *Place of Trial—Interstate Application of Intrastate Methods of Adjustment*, 44 Harv. L. Rev. 41, 52; Blair, *The Doctrine of Forum Non Conveniens in Anglo-American Law*, 29 Col. L. Rev. 1, 18. For instance, it is stated that "No matter how little dispute there is as to the desirability of such legislation, there is comparatively little chance of overcoming legislative inertia and securing its passage unless some accident happens to focus attention upon it. The best hope is that the courts will feel free to take appropriate action without specific legislation authorizing them to do so." Foster, *supra* at 52.